

From: Phillips, Frederick (ENRD)
To: [Yackulic, Ted](#); [Moreen, Ed](#)
Subject: Fwd: Suggested Additions to the Settlement Agreement
Date: Monday, April 16, 2018 8:12:21 AM

Luke forwarded this yesterday. I haven't spoken with him yet.

Sent from my iPhone

Begin forwarded message:

From: Lukas O'Dowd <luke@lyonsodowd.com>
Date: April 15, 2018 at 2:33:25 PM EDT
To: "Phillips, Frederick (ENRD)" <Frederick.Phillips@usdoj.gov>
Subject: Fwd: Suggested Additions to the Settlement Agreement

Fred,

Below is an email from Dillon requesting minor changes to the agreement. They do not want to force a new comment period, or extension, if inserting this language does that. In my opinion the statements are immaterial and act to clarify what is already said in the agreement. I'm running this by the Company for approval. If making immaterial changes, or amending the agreement slows this down at all. I think the Company may be willing to enter into a side MOU with the Tribe that may address their concerns.

Please let me know your thoughts on the process.

Luke O'Dowd

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Begin forwarded message:

From: "Dylan R. Hedden-Nicely" <dylan@hedden-nicely.com>

Subject: Suggested Additions to the Settlement Agreement

Date: April 14, 2018 at 7:36:52 PM PDT

To: "Lukas O'Dowd" <luke@lyonsodowd.com>

Cc: "Phillip Cernera" <philc@cdatribe-nsn.gov>

Luke,

Thank you for taking the time to speak with me on your weekend. As discussed, please find the Tribe's suggested changes to the settlement agreement below. We view these changes to be clarifying rather than substantive but think they more clearly define the Mining Company's obligations moving into an uncertain future.

¶ 33: insert a second sentence with the following [or something substantially similar]: "Purchaser acknowledges that the first priority of the CTP is to treat AMD generated at the Site from Existing Contamination and agrees to secure additional treatment facilities in the event that the CTP is no longer able to accommodate both AMD from Existing Contamination and any changes in AMD composition, volumes and/or concentrations as a result of Purchaser's activities at the Site.

¶ 39: insert after "December 1, 2017" the following: "for AMD resulting from existing contamination . . ."

¶ 62: insert before "The covenant not to sue" the following: "This agreement and . . ."

¶ 62: insert after "above, does not pertain to any" the following: "liability Purchaser may incur arising from new mining activity at the Site or any other . . ."

¶ 62(d): insert after "federal" the following: "tribal,"

Thank you for your consideration. Please don't hesitate to get in touch with any questions or concerns. DHN.